

FILED

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA, FORT MYERS DIVISION

2019 AUG 12 AM 11:47
CLERK, US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS FLORIDA

TIMOTHY C. KLENK

Plaintiff

Case No. _____

v.

National Transportation Safety Board

Defendant

2:19-cv-568-TPB-NPM

COMPLAINT FOR INJUNCTIVE RELIEF

A. Jurisdiction

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552, requesting the Court to order the production of agency records concerning the results of a test done for the National Transportation Safety Board (the “NTSB”) on the Cockpit Voice Recorder (“CVR”) of TWA Flight 800 (“TWA800”) which defendant has improperly withheld from plaintiff.
2. This court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B).

B. The Parties

3. Plaintiff, Timothy C. Klenk, is a resident of Fort Myers, Florida and a co-leader of the Aviation Club at the Shell Point Retirement Community in Fort Myers. He is the requestor of the records which defendant is improperly withholding (the “Requested Documents”).
4. Defendant, NTSB, is an agency of the United States and has possession of the Requested Documents which plaintiff seeks.

C. Background—The Dispute

5. Plaintiff's Request for Documents arises from a dispute about the cause of the explosion of a TWA 747 (TWA800) off the South shore of Long Island, N.Y. on July 17, 1996, killing all 230 persons on board (the "Crash").
6. The government claims that the Crash occurred because of the spontaneous explosion of a fuel tank.
7. In contrast, many eyewitnesses saw an object which they believe was a missile ascending from the surface of the ocean just before the plane exploded.
8. Although there is an abundance of evidence supporting the eyewitnesses' position, none of these witnesses was permitted to testify at the NTSB's hearing about the cause of the Crash.
9. Thus, there has been a long-standing disagreement between the government and many others who dispute the government's explanation (the "Objectors"). The Objectors include, but are not limited to, many eyewitnesses, TWA employees, and families and friends of the 230 victims of the Crash. Plaintiff believes that the Objectors may be right.
10. As part of its investigation of the Crash, the NTSB conducted (or caused to be conducted) tests to determine the cause of a loud sound at the end of TWA800's CVR tape.. The NTSB at least implies that the results of these tests support its conclusion rather than the Objectors' conclusion about the cause of the explosion which brought down the plane. The Objectors are interested in finding out as much as they can about the results of the tests on TWA800's CVR tapes.

11. Plaintiff has sent an FOIA request to the NTSB for the Requested Documents and his request has been denied, as set forth below.

D. The Requested Documents

12. Plaintiff's original request for documents included two items which Plaintiff no longer requests and are no longer in issue. The remaining request is short, clear, limited and specific. Plaintiff asks only that the NTSB produce to Plaintiff:

Test Results of Noise on Cockpit Voice Recorder

Documents showing the results of the test conducted by experts at the University of Southampton on the tape (or other recording) of the loud sound on the cockpit voice recorder of TWA Flight 800 ("F800") to determine whether the sound was from a high velocity or a low velocity explosion (or some other fact).

13. Attached are the following exhibits which show the history of the plaintiff's FOIA Request:

Exhibit 1—Plaintiff's May 31, 2018, FOIA Request;

Exhibit 2—NTSB's (Ms. Melba Moye's) November 26, 2018, denial of plaintiff's Request based on 5 U.S.C. §552(b)(5) ("Exemption 5");

Exhibit 3—Plaintiff's February 21, 2019, appeal from the November 26, 2018, denial; and

Exhibit 4—The NTSB'S April 17, 2019, denial of plaintiff's appeal.

14. Plaintiff has a right of access to the Requested Documents under 5 U.S.C. §552(A)(3) and there is no legal basis for defendant's denial of such access.
15. The NTSB claims that it "withheld draft correspondence, and preliminary and analytical data that reflected the agency's deliberative process under FOIA Exemption 5. (See Exhibit 4, page 1.). This exemption could not apply.

E. Relief Requested

WHEREFORE, plaintiff requests that the Court:

1. Order the defendant to provide plaintiff access to the Requested Documents and enjoin defendant from failing to do so;
2. Award plaintiff his costs pursuant to 28 U.S.C §552(a)(4)(E); and
3. Grant such other and further relief it deems just and proper.

Dated: August 12, 2019

Respectfully submitted,


Plaintiff, Pro Se

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